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7 NUTANIX, INC.

8  
9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11 SAN JOSE DIVISION

12 NUTANIX, INC.,

Case No.: \_\_\_\_\_

13 Plaintiff,

14 v.

15 UNILOC USA, INC. and UNILOC  
16 LUXEMBOURG, S.A.,

**COMPLAINT FOR  
DECLARATORY JUDGMENT OF  
NON-INFRINGEMENT**

**DEMAND FOR JURY TRIAL**

17 Defendants.

18  
19 1. Plaintiff Nutanix, Inc. (“Nutanix”) hereby alleges as follows for this complaint  
20 against Uniloc USA, Inc. and Uniloc Luxembourg, S.A. (collectively “Uniloc”):

21 **THE PARTIES**

22 2. Plaintiff Nutanix is a corporation organized under the laws of Delaware, with its  
23 headquarters at 1740 Technology Drive, Suite 150, San Jose, California 95110.

24 3. Uniloc USA, Inc. (“Uniloc USA”) is a Texas corporation having a principal place  
25 of business at Legacy Town Center I, Suite 380, 7160 Dallas Parkway, Plano, Texas 75024.

26 4. Uniloc Luxembourg S.A. (“Uniloc Luxembourg”) is a Luxembourg public limited  
27 liability company having a principal place of business at 15, Rue Edward Steichen, 4<sup>th</sup> Floor, L-

1 2540, Luxembourg (R.C.S. Luxembourg B159161).

2 **JURISDICTION AND VENUE**

3 5. This action is based on the patent laws of the United States, Title 35 of the United  
 4 States Code, § 1 et. seq., with a specific remedy sought under the Federal Declaratory Judgments  
 5 Act, 28 U.S.C. §§ 2201 and 2202. An actual, substantial, and continuing justiciable controversy  
 6 exists between Nutanix and Uniloc that requires a declaration of rights by this Court.

7 6. This Court has subject-matter jurisdiction over this action pursuant to 28 U.S.C.  
 8 §§ 1331 and 1338(a).

9 7. This Court has personal jurisdiction over Uniloc USA. Uniloc USA is engaged  
 10 primarily in the business of patent licensing. It financed the patent licensing and assertion campaign  
 11 at issue in this case at least in part with funding from a company located in the Northern District of  
 12 California. In addition, Uniloc USA has at least thirty-three patent licensees in this District. Uniloc  
 13 USA has further engaged in extensive settlement and licensing negotiations with entities based in  
 14 this District.

15 8. This Court also has personal jurisdiction over Uniloc Luxembourg. Uniloc  
 16 Luxembourg, along with Uniloc USA, is primarily engaged in the business of patent licensing.  
 17 Uniloc Luxembourg also financed the patent-licensing and assertion campaign at issue in this case  
 18 at least in part with funding from a company located in the Northern District of California. In  
 19 addition, Uniloc Luxembourg has at least thirty-three patent licensees in this District. Uniloc  
 20 Luxembourg has further engaged in extensive settlement and licensing negotiations with entities  
 21 based in this District.

22 9. Venue is proper in this Court pursuant to 28 U.S.C. § 1331(c) because Uniloc USA  
 23 resides in this district, and Uniloc Luxembourg is an alien entity and therefore subject to suit in any  
 24 district.

25 **INTRADISTRICT ASSIGNMENT**

26 10. This is an intellectual property action subject to district-wide assignment pursuant  
 27 to Local Rule 3-2(c) and 3-5(b).

## **FACTUAL BACKGROUND**

11. Nutanix is a leader in enterprise cloud computing and provides a cloud platform that  
2 leverages web-scale engineering and consumer-grade design to natively converge compute,  
3 virtualization and storage into a resilient, software-defined solution.

5. Uniloc is a patent-licensing company that neither makes nor sells any products or  
6 services.

7. Uniloc Luxembourg purports to be the owner, by assignment, of U.S. Patent No.  
8 6,324,578 (“the ’578 patent”), entitled “Methods, Systems and Computer Program Products for  
9 Management of Configurable Application Programs on a Network.”

10. Uniloc USA purports to be the exclusive licensee of the ’578 patent.

11. Uniloc Luxembourg purports to be the owner, by assignment, of U.S. Patent No.  
12 7,069,293 (“the ’293 patent”), entitled “Methods, Systems and Computer Program Products for  
13 Distribution of Application Programs to a Target Station on a Network.”

14. Uniloc USA purports to be the exclusive licensee of the ’293 patent.

15. Uniloc Luxembourg purports to be the owner, by assignment, of U.S. Patent No.  
16 6,510,466 (“the ’466 patent”), entitled “Methods, Systems and Computer Program Products for  
17 Centralized Management of Application Programs on a Network.”

18. Uniloc USA purports to be the exclusive licensee of the ’466 patent.

19. Uniloc Luxembourg purports to be the owner, by assignment, of U.S. Patent No.  
20 6,728,766 (“the ’766 patent”), entitled “Methods, Systems and Computer Program Products for  
21 License Use Management on a Network.”

22. Uniloc USA purports to be the exclusive licensee of the ’766 patent.

23. Uniloc Luxembourg purports to be the owner, by assignment, of U.S. Patent No.  
24 6,110,228 (“the ’228 patent”), entitled “Method and Apparatus for Software Maintenance at  
25 Remote Nodes.”

26. Uniloc USA purports to be the exclusive licensee of the ’228 patent.

27. Collectively, the ’578 patent, the ’293 patent, the ’466 patent, the ’766 patent, and  
28 the ’228 patent, will be referred to as the “patents-in-suit.”

1           24. On October 24, 2016, Uniloc filed suit against Nutanix alleging infringement of the  
 2 '578 patent, the '293 patent, the '466 patent, and the '766 patent in *Uniloc USA, Inc., et. al., v.*  
 3 *Nutanix, Inc.*, Case No. 2:16-cv-01193-RWS (E.D. Tex.). That case was consolidated for pre-trial  
 4 purposes with *Uniloc, USA, Inc., et. al., v. Netsuite, Inc.*, Case No. 2:16-cv-00862-RWS (E.D. Tex.).  
 5 Nutanix moved to dismissed Uniloc's complaint for failure to state a claim and for improper venue.  
 6 *Id.* at Dkt. No. 39. That motion is currently pending.

7           25. On March 6, 2017, Uniloc filed suit against Nutanix alleging infringement of the  
 8 '228 patent in *Uniloc USA, Inc., et. al., v. Nutanix, Inc.*, Case No. 2:17-cv-00174-JRG (E.D. Tex.).  
 9 That case is currently pending.

10          26. Section 1400(b) of Title 35 states that "any civil action for patent infringement may  
 11 be brought in the judicial district where the defendant resides, or where the defendant has  
 12 committed acts of infringement and has a regular and established place of business."

13          27. On May 22, 2017, the Supreme Court of the United States announced its decision  
 14 in *TC Heartland LLC v. Kraft Foods Group Brands LLC*, No. 16-341 (Slip op. May 22, 2017),  
 15 holding that "[a]s applied to domestic corporations, 'reside[nce]' in [28 U.S.C.] § 1400(b) refers  
 16 only to the State of incorporation." *Id.* at 10.

17          28. Nutanix is not incorporated in the State of Texas, and does not have a regular and  
 18 established place of business in the Eastern District of Texas. Consequently, venue is improper in  
 19 the Eastern District of Texas in *Uniloc USA, Inc., et. al., v. Nutanix, Inc.*, Case No. 2:16-cv-01193-  
 20 RWS (E.D. Tex.) and *Uniloc USA, Inc., et. al., v. Nutanix, Inc.*, Case No. 2:17-cv-00174-JRG (E.D.  
 21 Tex.).

## 22           FIRST CAUSE OF ACTION

### 23           **(Declaratory Judgment of Non-Infringement of the '578 Patent)**

24          29. Nutanix incorporates by reference its allegations contained in paragraphs 1 through  
 25 28 of this Complaint as though fully set forth herein.

26          30. Uniloc alleges in *Uniloc USA, Inc., et. al., v. Nutanix, Inc.*, Case No. 2:16-cv-01193-  
 27 RWS (E.D. Tex.), that Nutanix infringes one or more claims of the '578 patent. Nutanix  
 28 incorporates by reference the content of that Complaint, which is facially deficient, in that it fails

to articulate a factual basis for Uniloc's infringement contentions. Among other things, it does not even purport to map the Nutanix products to all elements of any asserted claim.

31. Nutanix asserts that it does not infringe or contribute to any infringement of any claim of the '578 patent either literally or under the doctrine of equivalents. Nutanix further asserts that it has not and does not induce any infringement of any claim of the '578 patent.

32. Therefore, there exists a substantial controversy between Nutanix and Uniloc, the parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment that Nutanix has not infringed any claim of the '578 patent.

33. An actual and justiciable controversy exists regarding the alleged infringement of the '578 patent by Nutanix. Nutanix accordingly requests a judicial determination of its rights, duties, and obligations with regard to the '578 patent.

34. A judicial declaration is necessary and appropriate so that Nutanix may ascertain its rights regarding the '578 patent.

## **SECOND CAUSE OF ACTION**

## **(Declaratory Judgment of Non-Infringement of the '293 Patent)**

35. Nutanix incorporates by reference its allegations contained in paragraphs 1 through 28 of this Complaint as though fully set forth herein.

36. Uniloc alleges in *Uniloc USA, Inc., et. al., v. Nutanix, Inc.*, Case No. 2:16-cv-01193-RWS (E.D. Tex.) that Nutanix infringes one or more claims of the '293 patent. Nutanix incorporates by reference the content of that Complaint, which is facially deficient, in that it fails to articulate a factual basis for Uniloc's infringement contentions. Among other things, it does not even purport to map the Nutanix products to all elements of any asserted claim.

37. Nutanix asserts that it does not infringe or contribute to any infringement of any claim of the '293 patent either literally or under the doctrine of equivalents. Nutanix further asserts that it has not and does not induce any infringement of any claim of the '293 patent.

38. Therefore, there exists a substantial controversy between Nutanix and Uniloc, the parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment that Nutanix has not infringed any claim of the '293 patent.

1           39. An actual and justiciable controversy exists regarding the alleged infringement of  
 2 the '293 patent by Nutanix. Nutanix accordingly requests a judicial determination of its rights,  
 3 duties, and obligations with regard to the '293 patent.

4           40. A judicial declaration is necessary and appropriate so that Nutanix may ascertain  
 5 its rights regarding the '293 patent.

6           **THIRD CAUSE OF ACTION**

7           **(Declaratory Judgment of Non-Infringement of the '466 Patent)**

8           41. Nutanix incorporates by reference its allegations contained in paragraphs 1 through  
 9 28 of this Complaint as though fully set forth herein.

10          42. Uniloc alleges in *Uniloc USA, Inc., et. al., v. Nutanix, Inc.*, Case No. 2:16-cv-01193-  
 11 RWS (E.D. Tex.) that Nutanix infringes one or more claims of the '466 patent. Nutanix  
 12 incorporates by reference the content of that Complaint, which is facially deficient, in that it fails  
 13 to articulate a factual basis for Uniloc's infringement contentions. Among other things, it does not  
 14 even purport to map the Nutanix products to all elements of any asserted claim.

15          43. Nutanix asserts that it does not infringe or contribute to any infringement of any  
 16 claim of the '466 patent either literally or under the doctrine of equivalents. Nutanix further asserts  
 17 that it has not and does not induce any infringement of any claim of the '466 patent.

18          44. Therefore, there exists a substantial controversy between Nutanix and Uniloc, the  
 19 parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance  
 20 of a declaratory judgment that Nutanix has not infringed any claim of the '466 patent.

21          45. An actual and justiciable controversy exists regarding the alleged infringement of  
 22 the '466 patent by Nutanix. Nutanix accordingly requests a judicial determination of its rights,  
 23 duties, and obligations with regard to the '466 patent.

24          46. A judicial declaration is necessary and appropriate so that Nutanix may ascertain  
 25 its rights regarding the '466 patent.

1                   **FOURTH CAUSE OF ACTION**

2                   **(Declaratory Judgment of Non-Infringement of the '766 Patent)**

3                  47. Nutanix incorporates by reference its allegations contained in paragraphs 1 through  
4 28 of this Complaint as though fully set forth herein.

5                  48. Uniloc alleges in *Uniloc USA, Inc., et. al., v. Nutanix, Inc.*, Case No. 2:16-cv-01193-  
6 RWS (E.D. Tex.), that Nutanix infringes one or more claims of the '766 patent. Nutanix  
7 incorporates by reference the content of that Complaint, which is facially deficient, in that it fails  
8 to articulate a factual basis for Uniloc's infringement contentions. Among other things, it does not  
9 even purport to map the Nutanix products to all elements of any asserted claim.

10                 49. Nutanix asserts that it does not infringe or contribute to any infringement of any  
11 claim of the '766 patent either literally or under the doctrine of equivalents. Nutanix further asserts  
12 that it has not and does not induce any infringement of any claim of the '766 patent.

13                 50. Therefore, there exists a substantial controversy between Nutanix and Uniloc, the  
14 parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance  
15 of a declaratory judgment that Nutanix has not infringed any claim of the '766 patent.

16                 51. An actual and justiciable controversy exists regarding the alleged infringement of  
17 the '766 patent by Nutanix. Nutanix accordingly requests a judicial determination of its rights,  
18 duties, and obligations with regard to the '766 patent.

19                 52. A judicial declaration is necessary and appropriate so that Nutanix may ascertain its  
20 rights regarding the '766 patent.

21                   **FIFTH CAUSE OF ACTION**

22                   **(Declaratory Judgment of Non-Infringement of the '228 Patent)**

23                 53. Nutanix incorporates by reference its allegations contained in paragraphs 1 through  
24 28 of this Complaint as though fully set forth herein.

25                 54. Uniloc alleges in *Uniloc USA, Inc., et. al. v. Nutanix, Inc.*, Case No. 2:17-cv-00174-  
26 JRG (E.D. Tex.), that Nutanix infringes one or more claims of the '228 patent. Nutanix incorporates  
27 by reference the content of that Complaint, which is facially deficient, in that it fails to articulate a  
28

factual basis for Uniloc's infringement contentions. Among other things, it does not even purport to map the Nutanix products to all elements of any asserted claim.

55. Nutanix asserts that it does not infringe or contribute to any infringement of any claim of the '228 patent either literally or under the doctrine of equivalents. Nutanix further asserts that it has not and does not induce any infringement of any claim of the '228 patent.

56. Therefore, there exists a substantial controversy between Nutanix and Uniloc, the parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment that Nutanix has not infringed any claim of the '228 patent.

57. An actual and justiciable controversy exists regarding the alleged infringement of the '228 patent by Nutanix. Nutanix accordingly requests a judicial determination of its rights, duties, and obligations with regard to the '228 patent.

58. A judicial declaration is necessary and appropriate so that Nutanix may ascertain its rights regarding the '228 patent.

## **PRAYER FOR RELIEF**

WHEREFORE, Nutanix prays for a declaratory judgment against Uniloc as follows:

A. A declaration that Nutanix's technology is not covered by any claim of the '578 patent and that Nutanix does not infringe any claim of the '578 patent;

B. A declaration that Nutanix's technology is not covered by any claim of the '293 patent and that Nutanix does not infringe any claim of the '293 patent;

C. A declaration that Nutanix's technology is not covered by any claim of the '466 patent and that Nutanix does not infringe any claim of the '466 patent;

D. A declaration that Nutanix's technology is not covered by any claim of the '766 patent and that Nutanix does not infringe any claim of the '766 patent;

E. A declaration that Nutanix's technology is not covered by any claim of the '228 patent and that Nutanix does not infringe any claim of the '228 patent;

F. A declaration that Nutanix's case against Uniloc is an exceptional case within the meaning of 35 U.S.C. § 285;

G. An award of costs and attorneys' fees to Nutanix; and

1 H. Such other and further relief as the Court deems just and reasonable.

2 **JURY TRIAL IS DEMANDED ON ALL ISSUES SO TRIABLE**

3 Pursuant to Fed. R. Civ. P. 38(b) and Local Rule 3-6, Plaintiff Nutanix hereby demands a  
4 trial by jury of all issues triable before a jury.

5  
6 Dated: June 2, 2017

7 Respectfully submitted,

8 FENWICK & WEST LLP

9  
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